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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 31 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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STATE OF GUJARAT

Versus

NARANBHAI SAMJI PATEL & 5

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Appearance:

MR MUKESH PATEL for Appellant

MR AB MUNSHI for Respondent No. 1

MR YS MANKAD for Respondent No. 2

NOTICE SERVED for Respondent No. 6

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CORAM : MR.JUSTICE C.K.BUCH

Date of decision: 02/03/2001

ORAL JUDGEMENT

1. This is an appeal against the order of acquittal passed by the ld. Chief Judicial Magistrate, Bhuj in

Criminal Case No.53/86 on 13.6.1991 whereby respondentsoriginal accused were acquitted of the offences punishable under sections 7 & 16 of the Prevention of Food Adulteration Act, 1954 (hereinafter referred to as the PFA Act ).

2. According to the prosecution, Mr. M.P.Patel, complainant Food Inspector had taken sample from respondents ( hereinafter referred to as the accused) running a Edible Oil Mill. Sample was sent for analysis to the Public Analyst. On analysis, Laboratory of Public Analyst found that sample was adulterated. Accused were informed about the report and the complainant had applied for necessary sanction under the provisions of sec.20 of the PFA Act.

3. After recording evidence, ld. Chief Judicial Magistrate evaluated oral as well as documentary evidence and acquitted the accused vide judgment dated 13.6.1991. While acquitting the accused, ld. Chief Judicial Magistrate has held that the sanction as stipulated under sec.20 of the Act was not proper and, therefore, prosecution is bad.

4. Mr.A.B. Munshi, ld. counsel appearing for the accused has mainly submitted that considering the legal proposition on the day on which the order of acquittal was recorded, there was no material irregularity or illegality in the order. There is no apparent perversity in evaluating the facts narrated in the judgment and the ld. Chief Judicial Magistrate had rightly concluded that the sanction granted by the authority was not a valid sanction, as contemplated or required under the relevant provisions sec.20 of the PFA Act. While deciding the issue of sanction agitated by the accused, ld. Chief Judicial Magistrate had considered two decisions, amongst which one decision is of this Court (Coram: V.H. Bhairavia, J) in the case of Ramanbhai Shivabhai Prajapati v/s State of Gujarat & Anr., reported in 1990(2) GLH 576. I have considered the findings recorded by this Court reflected in para-16 of the aforesaid decision and I am satisfied that the plea agitated by the appellant State that the ld. Chief Judicial Magistrate had wrong proposition in deciding the point of sanction. It is brought to the notice of this court that said decision in the case of Ramanbhai Shivabhai (supra) is overruled by the Division Bench of this Court (Coram: N.J.Pandya & S.M. Soni,JJ ) on 11/12.7.1991 in the case of Harshvadan Dahyalal Sevak, Food Inspector v/s Nareshbhai Devandas Vaghvani & Another, reported in 1991(2) GLH 615. Mr. Munshi, ld. counsel for the

accused has submitted that the date of acquittal recorded by the trial court is relevant. The impugned judgment is dated 13.6.1991. So, till 11/12.7.1991, decision in the case of Ramanbhai (supra) was good law. I am inclined to accept the submission advanced by ld. counsel Mr. Munshi that in such type of contingency, doctrine of "prospective overruling" should be applied and the order of acquittal should not be reversed. Relying on the decision in the case of Arvindkumar Trikamlal Raval v/s Ratilal Hemaji & Anr., reported in 1994(2) GLR 1177, ( Coram : S.D. Dave, J ), ld. counsel Mr. Munshi has submitted that without reversing the order of acquittal and by applying the doctrine of "prospective overruling", this Court has held that respondent accused would be held technically guilty only under the altered legal position. Submission of Mr. Munshi has enough logical and legal strength because relying on the decision in the case of Ramanbhai (Supra), many courts of this State might have acquitted several accused persons on similar grounds. After a lapse of about 15 years of protracted criminal proceedings, it would not be judicious or legal to say that the order of acquittal was bad and the same requires to be set aside. I would like to quote relevant paras of the judgment in the case of Arvindkumar Raval (Supra). It has been observed in paras 14 & 15 of the aforesaid decision as under:-

"14. The facts, therefore, would justify the acceptance of the Doctrine of Prospective Overruling. The question as to whether in fact that recognisation of the doctrine is called for should be answered with the assistance of the above said pronouncement on which the learned Counsel for the respondent No.1 has placed reliance. The compactus of the decisions is in favour of the respondent-accused. It is thus clear that the Doctrine of Prospective Overruling which is canvassed by the learned Counsel for the respondent-accused requires to be recognised. If this is once done, the consequences are not unknown. As done in case of Food Inspector, Calicut Corporation (supra), the order of acquittal passed by the Court below cannot be set aside, but the respondent No.1 herein should be held only technically guilty. The appeal shall have to be allowed for this limited purpose only.

15. There should be a recognition that the respondent-accused herein would be technically guilty under the altered legal position but that would not allow me to set aside the orders of

acquittal passed in favour of the respondent No.1 herein by the Court below. The appeal, therefore, would succeed in part only on this technical point under which the respondent No.1 herein, should be found "technically guilty" only. There is no question of ordering the respondent No.1 herein to surrender and to undergo the sentence or pay the fine. Appeal is allowed to the above said extent only saying that the respondent No.1 herein is found to be technically guilty but without the liability of undergoing sentence or paying the fine."

While recording the above finding, the ld. Single Judge had considered various decisions discussing analysing the Doctrine of Prospective Overruling. Under the circumstances, I am not inclined to disturb the finding of the ld. trial Judge recorded in reference to the law prevailing on the date of decision.

5. Mr. Munshi, ld. counsel appearing for the accused has taken me through the relevant portions of the decision of the Apex Court in the case of Ramanand Chaudhari v/s State of Bihar & Ors., reported in 1994 Cr.LJ P.1221 and in the case of Mansukhlal Vithaldas Chauhan v/s State of Gujarat, reported in 1998(1) GLR P.793. I am in agreement with the submissions of ld. counsel Mr. Munshi for the accused that when sanction order is held to be bad, case is normally remanded to the authority for reconsideration of the matter and to pass the fresh order to sanction in accordance with law. In case of M.V.Chuahan (supra), the Apex Court has held under:-

" Normally, when the sanction order is held to be bad, the case is remitted back to the authority for reconsideration of the matter and to press a fresh order of sanction in accordance with law. But in the instant case, the incident is of 1983 and, therefore, after a lapse of fourteen years, it will not, in Court's opinion, be fair and just to direct that the proceedings may again be initiated from the stage of sanction so as to expose the appellant to another innings of litigation and keep him on trial for an indefinitely long period contrary to the mandate of Article 21 of the Constitution which, as part of right to life, philosophies, early end of criminal proceedings through a speedy trial."

6. In view of the facts and circumstances of the

case, even for the sake of argument, say of the appellant State, is accepted that the finding of the trial Court holding sanction invalid is not legal, the order of acquittal recorded by the trial Court is not required to be disturbed so as to expose the appellant to another innings of litigation and keep him on trial for an indefinite long period, contrary to the mandate of Article 21 of the Constitution. There is no question of holding accused guilty of the offence or to direct them to undergo imprisonment holding them "technically guilty". If doctrine of "Prospective Overruling" is applied to the facts of the present case, then, it should be held that the finding of the ld. trial Judge was in accordance with law at relevant point of time and finding should not be disturbed after a lapse of about 16 years.

7. For the reasons aforesaid, appeal fails and is hereby dismissed. Impugned order of acquittal passed by the ld. Chief Judicial Magistrate, Bhuj in Criminal Case No. 53/86 on 13.6.1991 is hereby confirmed.

2.3.2001 [ C.K. BUCH, J ]
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